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November 8, 2022

Via FOIAonline submission

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

**Re: Freedom of Information Act Request for Records Relating to MarkWest
Harmon Creek Gas Processing Plant Flaring Incidents**

Dear FOIA Officer,

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, the Environmental Integrity Project (EIP) requests records held by the U.S. Environmental Protection Agency (EPA) related to the Harmon Creek Gas Processing Plant (“Harmon Creek”) in Smith Township, Washington County, Pennsylvania operated by MarkWest Liberty Midstream & Resources, L.L.C., which is subject to a monitoring plan required by the Consent Decree, *United States v. MarkWest Liberty Midstream & Resources, L.L.C.*, No. 2:18-cv-00520-LPL (W.D. Pa. April 24, 2018) [hereinafter Consent Decree], available at <https://www.epa.gov/sites/production/files/2018-04/documents/markwest-cd.pdf>.

More specifically, EIP requests copies of the following records compiled by or submitted to EPA, EPA inspectors and/or or staff, EPA Region 3 inspectors and/or staff, Pennsylvania Department of Environmental Protection (PADEP) inspectors and/or staff, or MarkWest employees or staff:

- Harmon Creek Monitoring Plan Final Report;
- Harmon Creek “quarterly information report” for the Second Quarter of 2022 (Q2 2022); and
- Harmon Creek “quarterly information report” for the Third Quarter of 2022 (Q3 2022).

Format of Records

For purposes of this request, the term “records” means information of any kind, including, but not limited to, documents (handwritten, typed, electronic or otherwise produced, reproduced, or stored), letter, e-mails, facsimiles, memoranda, correspondence, notes, databases, drawings, graphs, photographs, minutes of meetings, electronic records of meetings, and any other compilation of data from which information can be obtained. The inspections reports and all correspondence documents should be provided in searchable .pdf format while any raw data should be provided in the following formats: CSV, JSON, or XML.

Claims of Exemption from Disclosure

If you regard any documents as exempt from required disclosure under the Freedom of Information Act, please exercise your discretion to disclose them nevertheless, keeping in mind that FOIA “is the most prominent expression of a profound national commitment to ensuring an open Government” and that “[a]ll agencies should adopt a presumption in favor of disclosure.” President Barack Obama, Memorandum For the Heads of Executive Departments and Agencies: Freedom of Information Act, 74 Fed. Reg. 4, 863 (Jan. 26, 2009).

In the alternative, after careful review for the purpose of determining whether any of the information is exempt from disclosure, please provide all reasonably non-exempt portions of records and communications as required by FOIA.

Should you elect to invoke an exemption, please provide the required full or partial denial letter and sufficient information to determine whether or not there may be grounds to appeal EPA’s decision. In accordance with the minimum requirements and regulations of due process, this information should include:

Basic factual material, including the originator, date, length, and addresses of the withheld items.

Explanations and justifications for denial, including the identification of the exemption applicable to the withheld information or portions of the information found to be subject to exemption, and how each exemption applies to the withheld material.

Request for Fee Waiver

This request meets the case-by-case requirements for a fee waiver under EPA regulations found at 40 C.F.R. § 2.107. Each of the six factors which must be met to satisfy an EPA fee waiver request are discussed as follows:

Factor 1. The subject of the request: *Whether the subject of the requested records concerns “the operations or activities of the government.” The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote.*

This request seeks to obtain quarterly air monitoring reports that were required to be submitted to EPA pursuant to a Consent Decree to which the United States government was a party. EPA is receiving these reports in order to support the agency’s enforcement duties as required by the Consent Decree and the Clean Air Act.

Factor 2. The informative value of the information to be disclosed: *Whether the disclosure is “likely to contribute” to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding when nothing new would be added to the public’s understanding.*

Obtaining these records will allow the public to better understand whether EPA is performing its compliance monitoring and enforcement duties under the Consent Decree and Clean Air Act and inform the public on Consent Decree progress and improvement in public health and the environment obtained as a result thereof.

Factor 3. The contribution to an understanding of the subject by the public is likely to result from disclosure: *Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media will satisfy this consideration.*

As stated above, the reports requested will help the public understand whether the Harmon Creek facility is compliant with the Clean Air Act regulations and Consent Decree and whether EPA is performing its duties under the Clean Air Act to enforce and ensure compliance with the terms of the Consent Decree. The Environmental Integrity Project is a non-profit entity engaged in educating the public about environmental issues and/or taking legal or other actions necessary to ensure compliance with federal environmental laws. The requestor intends to convey this information to the public, including citizens, elected officials, policy makers, and the regulated community, in reports, position papers, interactions with the press, and other means of publicfacing distribution. The Environmental Integrity Project uses its expertise to gather and publicly distribute information, particularly pollution-data, related to human health and the environment in a manner that is clear, transparent, and accurate.

Factor 4. The significance of the contribution to public understanding: *Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced significantly by the disclosure. The FOI Office will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is "important" enough to be made public.*

The requestor intends to analyze the information sought and distribute such analyses in a transparent manner to the public. None of these reports nor its data are available online without making this request; thus, this information is not readily available to the public. The requestors will organize and analyze this information and disseminate in a way that will significantly increase the public's understanding of whether this facility is in compliance with the Clean Air Act regulations and statute and whether EPA and PADEP are performing their duties under the law to ensure the facility remains in compliance with the Consent Decree.

Factor 5. The existence and magnitude of a commercial interest: *Whether the requester has a commercial interest that would be furthered by the requested disclosure. The FOI Office will consider any commercial interest of the requester or of any person on whose behalf the requester*

may be acting, that would be furthered by the requested disclosure. Requesters will be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

The information delivered in response to this request will not be used for any commercial purpose, business, trade, or profit. The requestor is a nonprofit public interest organization and has no commercial interest in this material.

Factor 6. The primary interest in disclosure: *Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure that disclosure is "primarily in the commercial interest of the requester." A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. FOI Offices ordinarily will presume that when a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.*

This factor is satisfied because the requestor does not have any commercial interest in disclosing the records sought.

For the above reasons, this request satisfies the fee waiver standards set forth in [40 C.F.R. § 2.107](#). However, in the event that EPA does not grant the requested waiver, please provide information concerning the specific basis for such a decision as required by EPA regulations as well as an estimate of the cost of the agency's response. In accordance with the FOIA Improvement Act of 2016, please provide responsive documents in an electronic format.

Opportunity to Provide Clarification

If I can provide any additional information or answer any questions that can help to clarify or limit this request, please do not hesitate to contact me at (202)263-4449 or via email at psebasco@environmentalintegrity.org.

Thank you for your assistance with this FOIA request and I look forward to hearing from you,

Sincerely,

_____/s/_____

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